BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2012-136-C - ORDER NO. 2012-479

JUNE 20, 2012

IN RE: Petition of the Office of Regulatory Staff for a Proceeding to Timely Review FCC Mandated Reductions to Intrastate Access Tariffs	)	ORDER RULING ON STATUS OF FUNDS RECEIVED FROM INTERIM LEC FUND IN FEDERAL REPORTING REQUIREMENTS

This matter comes before the Public Service Commission of South Carolina ("Commission") upon the Petitions filed by the South Carolina Cable Television Association ("SCCTA"), Competitive Carriers of the South, Incorporated ("Comp South"), and the South Carolina Telephone Coalition ("SCTC") asking the Commission to confirm that revenues received from the Interim LEC Fund ("ILF")[1] are intrastate switched access revenues, and to provide instructions as to the reporting and treatment of such revenues for purposes of implementing the recent order of the Federal Communications Commission ("FCC") regarding intercarrier compensation reform.[2]

[1] ILF is an access billing mechanism created by the Commission in Order No. 1996-882, as directed by the South Carolina General Assembly in S.C. Code Ann. § 58-9-280(L)-(M).

[2] *Report and Order and Further Notice of Proposed Rulemaking, Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund,* WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; and FCC 11-161, rel. Nov. 18, 2011 ("*USF-ICC Reform Order*").

A. Transition to Bill-and-Keep

On November 18, 2011, the FCC issued an order comprehensively reforming the universal service and intercarrier compensation systems.[3] The FCC in the *USF-ICC Reform Order* adopts "bill-and-keep" as the default methodology for all intercarrier compensation traffic.[4] Under a bill-and-keep arrangement, a carrier looks to its own end users, rather than to other carriers, to recover the costs of its network.[5] To the extent additional support is needed in order to ensure that end user rates remain affordable, the FCC directed that such support will come from the Connect America Fund established by the FCC and/or from state universal service funds.[6] The FCC adopted a gradual transition for terminating access of six years for price cap carriers[7] and nine years for rate-of-return carriers.[8] The FCC has not addressed the transition of originating access at this time.

To begin the transition of switched access rates to bill-and-keep, the FCC capped all interstate switched access and reciprocal compensation rates effective December 29, 2011 (the effective date of the *USF-ICC Reform Order*).[9] The FCC also capped all intrastate rates (both originating and terminating) for price cap carriers and terminating

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[3] *See id.*
[4] *Id.* at ¶ 736.
[5] *See id.* at ¶ 737.
[6] *See id.*
[7] *Id.* at ¶ 739. Price cap carriers are Bell Operating Companies and other large and mid-sized carriers that are regulated as price cap companies at the federal level. *See id.* at ¶ 21; 47 C.F.R. § 61.3(bb).
[8] *Id.* at ¶ 739. Rate-of-return carriers are smaller carriers that are subject to rate-of-return regulation at the federal level. *See* 47 C.F.R. § 54.5. Rate-of-return carriers operate in many of the country's most difficult and expensive areas to serve. *See id.* at ¶ 26. SCTC companies are rate-of-return carriers at the federal level.
[9] *Id.* at ¶ 801.

intrastate access rates for rate-of-return carriers, effective December 29, 2011.[10] The FCC directed both price cap and rate-of-return carriers to bring terminating intrastate switched end office and transport, and reciprocal compensation rates, into parity with interstate access rates in two steps, on July 1, 2012 and July 1, 2013. After that, both intrastate and interstate terminating switched end office rates and reciprocal compensation rates are to be transitioned down over a period of six years for price cap carriers (with the final reduction made on July 1, 2018) and nine years for rate-of-return carriers (with the final reduction made on July 1, 2020).[11]

B. Recovery Mechanism

To facilitate the gradual transition away from intercarrier compensation revenues, the FCC adopted a transitional recovery mechanism that allows incumbent local exchange carriers ("ILECs") to recover intercarrier compensation revenues, up to a defined baseline amount, from alternate revenue sources consisting of (1) incremental, limited increases in end user rates (through an Access Revenue Charge or "ARC"); and (2) where appropriate, universal service support through the Connect America Fund ("CAF").

The first step in transitioning to the recovery mechanism is for a carrier to determine its Eligible Recovery amount. For price cap ILECs, the baseline amount eligible for recovery is 90 percent of their Fiscal Year ("FY") 2011 interstate and intrastate access revenues for the rates subject to reform and net reciprocal compensation

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[10] *Id.*
[11] *See id.* at ¶ 801 and Figure 9 (Intercarrier Compensation Reform Timeline).

revenues.[12] For rate-of-return ILECs, the calculation is a little more complicated, but the concept is the same – *i.e.*, to calculate the difference between what the carrier was receiving in intercarrier compensation before reform and after reform, and provide carriers with the opportunity to recover that revenue (albeit on a reduced basis each year) through alternate sources of revenue. For rate-of-return carriers, the baseline for eligible recovery is based on their 2011 interstate switched access revenue requirement, plus FY2011 intrastate terminating switched access revenues and FY2011 net reciprocal compensation revenues.[13] Eligible Recovery for rate-of-return ILECs is then calculated as the difference between the baseline (subject to five percent annual reductions) and the revenues from the reformed intercarrier compensation rates in that year, based on actual minutes of use multiplied by the associated default rate for that year. To simplify: In year one, the carrier would calculate what it was receiving in intercarrier compensation in the base year (FY2011), reduce that amount by 5%, then subtract the amount it actually receives in intercarrier compensation in year one. That amount is the ILEC's "Eligible Recovery," *i.e.*, the amount it will be eligible to recover from its end users (through the ARC) and through an explicit federal universal service fund (CAF) in year one.

Once the Eligible Recovery is determined for a carrier, the carrier may[14] implement an ARC to the extent its basic local service rates (including mandatory per-line charges such as state and federal Subscriber Line Charges, mandatory EAS charges,

[12] *See id.* at ¶ 851.
[13] *Id.*
[14] Carriers are not required to implement the ARC, but it will be imputed for purposes of evaluating the need for additional recovery. *See id.* at ¶ 908 and fn. 1781.

E911 charges, etc.) are below the FCC's established benchmark of $30.00.[15] The ARC is to be implemented in increments not to exceed $.50 for a period of up to 5 years for price cap ILECs and 6 years for rate-of-return ILECs (i.e., total ARC not to exceed $2.50 for price cap carriers and $3.00 for rate-of-return carriers).[16] The amount that cannot be recovered through the ARC may be recovered through the CAF.[17]

Carriers are required to submit to the appropriate state regulatory commissions data regarding all FY2011 switched access MOU and rates, broken down into categories and subcategories corresponding to the relevant categories of rates being reduced.[18] The FCC expects states to monitor implementation of the recovery mechanism and related intrastate tariff filings necessitated by the access reductions.[19] Price cap and rate-of-return ILECs eligible for CAF support must also file the information with the Universal Service Administrative Company ("USAC"), which will work with the FCC's Wireline Competition Bureau to implement processes for administration of CAF ICC support.[20]

C. Interim LEC Fund is Bulk-Billed Intrastate Switched Access

ILF revenues are revenues from bulk-billed intrastate switched access service and, therefore, are intrastate switched access revenues for purposes of determining the Eligible Recovery amount for ILF recipients in implementing the federal recovery mechanism. A portion of the intrastate access revenues of non-AT&T ILECs in South Carolina is billed and collected through the ILF, an access billing mechanism created by the Commission in

[15] *See id.* at ¶¶ 913-914.
[16] *See id.* at ¶ 908. The referenced rate is for residential and single-line business customers. The maximum increment for multi-line business customers is $1.00 per line.
[17] *Id.* at ¶ 905.
[18] *Id.* at ¶ 880.
[19] *Id.* at ¶¶ 880, 898, 903.
[20] *Id.* at ¶¶ 880, 898.

Order No. 1996-882,[21] as directed by the South Carolina General Assembly in S.C. Code Ann. § 58-9-280(L)-(M).

The ILF was sized to equal the amount of the reduction in revenues resulting from the ILECs reducing their intrastate toll switched access rates to the level of the largest LEC operating in the state (AT&T), offset by adjustment of other rates (i.e., basic local service rates) up to statewide average rates. Upon creation of the ILF, intrastate access revenues billed directly by participating ILECs on a per-minute basis were reduced to rates comparable to those charged by AT&T, end user rates were rebalanced to recover some of the lost access revenues, and the remaining intrastate access revenue requirement was moved to the ILF. The Office of Regulatory Staff ("ORS"), as the Administrator of the ILF, bills interexchange carriers (i.e., those entities receiving an access or interconnection rate reduction from LECs) for their share of ILF based on their relative share of the ILF recipients' intrastate switched access minutes of use ("MOU"), using the ILF recipients' switched access MOU billing information. ORS sends out a worksheet to each interexchange carrier showing the access MOUs reported by each ILEC for that carrier. The carrier's ILF requirement is calculated by multiplying the total MOUs by a per-MOU factor. ORS bills and collects those amounts from the interexchange carriers, and the resulting revenue is distributed to each ILEC recipient as though it were billed directly. ILF is a mechanism specifically mandated by state law to fund intrastate switched access reductions, and it is required by state law to be billed to interexchange carriers who would otherwise pay access directly to the carriers participating in ILF,

[21] *See also* Commission Order Nos. 1997-710 (Denying Reconsideration), 2001-396 (Order on Remand), and 2001-632 (Denying Reconsideration).

based on the contributing interexchange carriers' relative share of intrastate switched access minutes of use. As such, ILF is bulk-billed intrastate switched access.

ILF is mandated by state statute,[22] as implemented by Commission order.[23] FCC rules expressly provide: "Nothing in this section shall be construed to require a carrier to file or maintain a tariff if it is not otherwise required to do so under applicable law."[24] FCC rules also provide that, with respect to intrastate switched access services, "LECs *who are otherwise required to file tariffs*" must tariff rates no higher than the transitional rates set forth in the *USF-ICC Reform Order*.[25] We do not require LECs to file tariffs for the ILF portion of intrastate switched access because the ILF mechanism is created by state law and implemented by this Commission. Under these circumstances, FCC rules do not require ILF to be expressly stated in the ILECs' intrastate access tariffs in order to be included in the recovery mechanism.

Alternatively, to the extent the FCC may require ILF to be expressly stated in the ILECs' intrastate access tariffs in order to be included in the recovery mechanism, this requirement is met. FCC rules define "tariffs" broadly to include "tariffs, price lists *or other instrument* (collectively 'tariffs')."[26] We find that the state statutes and Commission Orders and procedures defining ILF constitute part of the LECs' "tariffed" intrastate switched access rates in South Carolina.

It is consistent with relevant FCC and Commission policy, and in the public interest, to treat ILF as part of the ILEC recipients' intrastate access revenues for

[22] S.C. Code Ann. § 58-9-280(L)-(M).
[23] Order No. 1996-882 in Docket No. 1996-318-C.
[24] 47 C.F.R. § 51.905(c).
[25] 47 C.F.R. § 51.905(b) (emphasis added).
[26] 47 C.F.R. § 51.905(b)(2).

purposes of the federal recovery mechanism. The legislature and the Commission took steps early on to reduce high intrastate switched access rates, rebalance low end user rates, and move a portion of switched access revenues to the ILF – an explicit funding mechanism. Now that the FCC has created a federal funding mechanism for similar purposes, South Carolina and its citizens should be permitted to participate in that effort as well. If ILF is not moved to the federal recovery mechanism, South Carolina LECs may be denied the opportunity to recover some portion of their intercarrier compensation revenues from the federal recovery mechanism, as other states are permitted to do, while at the same time being required to fund the efforts of other states that are just now taking action to reduce intrastate access rates.

FINDINGS AND CONCLUSIONS

1. The FCC in the *USF-ICC Reform Order* has adopted "bill and keep" as the default methodology for all intercarrier compensation traffic. To the extent additional support is needed in order to ensure that end user rates remain affordable, the FCC directed that such support will come from the Connect America Fund established by the FCC and/or from state universal service funds. The FCC adopted a gradual transition for terminating access of six years for price cap carriers and nine years for rate-of-return carriers. The FCC has not addressed the transition of originating access at this time.

2. ILF should be treated as tariffed intrastate switched access for purposes of determining participating LECs' Eligible Recovery amount in transitioning to the federal recovery mechanism.

3. It is consistent with relevant FCC and Commission policy, and in the public interest, to treat ILF as part of the ILEC recipients' intrastate access revenues for purposes of the federal recovery mechanism.

4. We direct those LECs who receive funding from ILF to make the appropriate filings, including supporting documentation, to reflect reductions in the rates for intrastate switched access in accordance with the FCC's *USF-ICC Reform Order*.

5. The Office of Regulatory Staff, as Administrator of the ILF, shall use reasonable methodologies and procedures, consistent with the FCC's *USF-ICC Reform Order*, to calculate and to transition the terminating switched access portion of the ILF for each participating LEC into the federal recovery mechanism, and to make appropriate adjustments to the ILF to account for such transition.

IT IS THEREFORE ORDERED THAT:

(1) Revenues received from the Interim LEC Fund are intrastate switched access revenues;

(2) Revenues received from the Interim LEC Fund should be treated as intrastate switched access revenues for purposes of implementation of the FCC *USF-ICC Reform Order*, as described herein; and

(3) The parties are directed to move forward in an expeditious manner to allow those LECs who participate in the Interim LEC Fund to timely comply with the time frames set forth by the FCC in its *USF-ICC Reform Order*.

(4) This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

John E. Howard, Chairman

ATTEST:

David A. Wright, Vice Chairman

(SEAL)